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ASUSTEK COMPUTER INC. AND  
10 ASUS COMPUTER INTERNATIONAL

11  
12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14 SAN FRANCISCO DIVISION  
15

16 ASUSTEK COMPUTER INC. and ASUS  
17 COMPUTER INTERNATIONAL,

CASE NO. C 07-01942-MHP

18 Plaintiffs,  
19 v.  
20 RICOH COMPANY, LTD.,  
21 Defendant.

**STIPULATED PROTECTIVE ORDER**

22  
23 IT IS HEREBY STIPULATED by the Parties through their respective counsel  
24 that, in order to facilitate document disclosure and production under the Local Rules of this Court  
25 and the Federal Rules of Civil Procedure, the following Protective Order be entered by the Court.  
26 This Order shall remain in effect through the conclusion of the litigation between the parties and  
27 completion of obligations under Paragraph 16 below.  
28

STIPULATED PROTECTIVE ORDER

CASE NO. C 07-01942-MPH

1           In support of this Order, this Court finds that:

2           Documents, things, materials or information containing confidential or proprietary  
 3 technical, scientific or business information and/or trade secrets ("Confidential Information") that  
 4 bear significantly on the parties' claims or defenses are likely to be disclosed or produced during  
 5 the course of discovery in this litigation;

6           The parties to this litigation may assert that public dissemination and disclosure of  
 7 Confidential Information could severely injure or damage the party disclosing or producing the  
 8 Confidential Information and could place the party at a competitive disadvantage;

9           Counsel for the party or parties receiving Confidential Information are presently  
 10 without sufficient information to accept the representation(s) made by the party or parties  
 11 disclosing or producing Confidential Information as to the confidential, proprietary, and/or trade  
 12 secret nature of such Confidential Information; and

13           To protect the respective interests of the parties and to facilitate the progress of  
 14 disclosure and discovery in this litigation, the following Order should issue:

15           IT IS THEREFORE ORDERED THAT:

16           1.       Documents or discovery responses containing Confidential Information produced  
 17 by a party to this litigation are referred to herein as "Protected Documents." Except as otherwise  
 18 indicated below, all documents or discovery responses designated by the disclosing or producing  
 19 party as "CONFIDENTIAL" or "OUTSIDE COUNSEL ONLY" and which are disclosed or  
 20 produced to the attorneys for the other parties to this litigation shall be Protected Documents and  
 21 are entitled to confidential treatment as described below.

22           2.       Protected Documents shall not include (a) advertising materials, (b) materials that  
 23 on their face show that they have been published to the general public, or (c) documents that have  
 24 been submitted to any governmental entity without request for confidential treatment. Protected  
 25 Documents designated as "CONFIDENTIAL" may include confidential technical, marketing,  
 26 business and trade information unknown to the public. Protected Documents designated as  
 27 "OUTSIDE COUNSEL ONLY" shall include highly confidential and sensitive information  
 28 related to research, development, design, sales, marketing, manufacturing or other activities, that

1 the disclosing party reasonably and in good faith believes is so highly sensitive that its disclosure  
 2 to persons other than those specified in Paragraph 7 could reasonably be expected to result in  
 3 injury to the disclosing party. The identification of Protected Documents with either of these  
 4 designations is referred to herein as "Confidential Designation" or "Designated Under This  
 5 Protective Order."

6       3. Any party (including any third party not named in this litigation) that produces  
 7 documents, things, materials or information in discovery in this litigation may make Confidential  
 8 Designations on Protected Documents for which the producing party believes in good faith that  
 9 there is a right to confidential treatment under Federal Rule of Civil Procedure 26 consistent with  
 10 the designation level. The parties represent that such information does exist, and that they have  
 11 historically maintained such informational confidential in the ordinary course of their respective  
 12 businesses, and will continue to do so. Designations that are shown to be clearly unjustified, or  
 13 that have been made for an improper purpose (e.g., to unnecessarily encumber or retard the case  
 14 development process, or to impose unnecessary expenses and burdens on other parties), shall  
 15 expose the Designating Party to sanctions.

16       If it comes to a party's or non-party's attention that information or items that it  
 17 designated for protection do not qualify for protection at all, or do not qualify for the level of  
 18 protection initially asserted, that party or non-party must promptly notify all other parties that it is  
 19 withdrawing the mistaken designation.

20       4. At any time after the delivery of Protected Documents, counsel for the party or  
 21 parties receiving the Protected Documents may challenge the Confidential Designation of all or  
 22 any portion thereof by providing written notice thereof to counsel for the party disclosing or  
 23 producing the Protected Documents. If the parties are unable to agree as to whether the  
 24 Confidential Designation of all or a portion of the Protected Documents is appropriate, the party  
 25 or parties receiving the Protected Documents shall certify to the Court that the parties cannot  
 26 reach an agreement as to the confidential nature of all or a portion of the Protected Documents.  
 27 Thereafter, the party or parties disclosing or producing the Protected Documents shall have ten  
 28 (10) calendar days from the date of certification to file a motion for protective order with regard

1 to any Protected Documents in dispute. The party or parties disclosing or producing the Protected  
 2 Documents shall have the burden of establishing that the disputed Protected Documents are  
 3 entitled to confidential treatment. If the party or parties disclosing or producing the Protected  
 4 Documents do not timely file a motion for protective order, then the Protected Documents in  
 5 dispute shall no longer be subject to confidential treatment as provided in this Order. All  
 6 Protected Documents are entitled to confidential treatment pursuant to the terms of this Order  
 7 until and unless the parties formally agree in writing to the contrary, a party fails to timely move  
 8 for protective order, or a contrary determination is made by the Court as to whether all or a  
 9 portion of a Protected Document is entitled to confidential treatment.

10       5.     Protected Documents and any information contained therein shall not be used or  
 11 revealed, shown, disseminated, copied, or in any way communicated to anyone for any purpose  
 12 whatsoever, except as provided for below.

13       6.     Protected Documents designated as "CONFIDENTIAL" and any information  
 14 contained therein shall be revealed or shown only to the following persons:

15               (a) Outside Counsel of Record for the party receiving Protected Documents or any  
 16 information contained therein.

17               (b) Employees of such counsel (excluding experts and investigators) assigned to  
 18 and necessary to assist such counsel in the preparation and trial of this litigation;

19               (c) Up to four (4) employees of each party receiving Protected Documents,  
 20 designated in writing by such party to all other parties following the entry of this Protective  
 21 Order, provided that such party complies with Paragraph 9 (such designated employees are  
 22 referred to herein as the "Internal Representatives"), and the Internal Representatives shall be  
 23 limited to such persons as are reasonably necessary for development and presentation of the  
 24 claims or defenses;

25               (d) Employees of any professional photocopy service, graphics design service,  
 26 legal interpreters or translators, or jury consultants (including mock jurors, focus group members,  
 27 and the like) used by counsel;

28

10        7. Protected Documents designated as "OUTSIDE COUNSEL ONLY" and any  
11 information contained therein shall be revealed or shown only to the following persons:

(c) Employees of any professional photocopy service, graphics design service, legal interpreters or translators, or jury consultants (including mock jurors, focus group members, and the like) used by counsel;

(e) Any independent expert retained by the receiving party to assist in the preparation for this litigation or to testify at trial, provided that the Protected Documents received or any information contained therein that is disclosed to an independent expert pertains to the expected consultation or testimony of such independent expert and the party receiving Protected Documents complies with Paragraph 10. The Protected documents may be shown to secretarial and clerical employees and technical staff associated with and acting under the supervision of such independent expert.

1       8. Protected Documents that have been designated "CONFIDENTIAL" or  
2 "OUTSIDE COUNSEL ONLY" under this protective order may be filed with the clerk. Such  
3 Protected Documents shall be filed in a sealed envelope or other opaque container, covered by a  
4 caption page marked with one of the following statements, whichever is appropriate:

5             "FILED UNDER SEAL"

6             "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER"

7             or

8             "FILED UNDER SEAL"

9             "OUTSIDE COUNSEL ONLY – SUBJECT TO PROTECTIVE ORDER"

10      9. When any party receiving Protected Documents designated as "CONFIDENTIAL"  
11 under this Protective Order desires to reveal or show the Protected Documents or any information  
12 contained therein to any Internal Representative referred to above, such receiving party shall, at  
13 least ten (10) calendar days prior to disclosure of the Protected Documents to the Internal  
14 Representative, provide to the producing party the name and business address of the Internal  
15 Representative to whom the receiving party desires to reveal or show Protected Documents  
16 designated as "CONFIDENTIAL" under this Protective Order or any information contained  
17 therein.

18             Within ten (10) calendar days of receipt of such information, the party producing  
19 such Protected Documents may object in writing to the disclosure of such Protected Documents  
20 to the designated Internal Representative. Any failure to object in writing within such period to  
21 the proposed disclosure of such Protected Documents shall be deemed to have consented by the  
22 producing party to such disclosure.

23             If an objection to the disclosure of such Protected Documents under this paragraph  
24 is not resolved by the parties within ten (10) calendar days of service of the written notice of  
25 objection, the producing party may file a motion with the Court within twenty (20) calendar days  
26 of service of the notice of objection. If such a motion is filed, the disclosure of such Protected  
27 Documents to the Internal Representative shall be withheld pending the ruling of the Court on any  
28 such motion.

1           Prior to revealing or showing any Protected Documents designated  
 2 "CONFIDENTIAL" under this Protective Order or any information contained therein to its  
 3 Internal Representative, counsel for the receiving party of such Protected Documents shall cause  
 4 such Internal Representative to sign a copy of Exhibit A attached hereto and shall serve a copy of  
 5 Exhibit A on counsel for the other parties. Counsel shall maintain the original of Exhibit A and  
 6 shall provide a copy thereof to the Court, if required.

7           10. When any party receiving Protected Documents designated as "CONFIDENTIAL"  
 8 or "OUTSIDE COUNSEL ONLY" under this Protective Order desires to reveal or show such  
 9 Protected Documents or any information contained therein to any independent expert, such  
 10 receiving party shall, at least ten (10) calendar days prior to disclosure of such Protected  
 11 Documents to the independent expert, provide to the producing party the name, business address  
 12 and resume of the independent expert to whom the receiving party desires to reveal or show  
 13 Protected Documents designated "CONFIDENTIAL" or "OUTSIDE COUNSEL ONLY" under  
 14 this Protective Order or any information contained therein.

15           Within ten (10) calendar days of receipt of such information, the party producing  
 16 such Protected Documents may object in writing to the disclosure of such Protected Documents  
 17 to the independent expert. Any failure to object in writing within such period to the proposed  
 18 disclosure of such Protected Documents shall be deemed to have consented by the disclosing or  
 19 producing party to such disclosure.

20           If an objection to the disclosure of such Protected Documents under this paragraph  
 21 is not resolved by the parties within ten (10) calendar days of service of the written notice of  
 22 objection, the producing party may file a motion with the Court within twenty (20) calendar days  
 23 of service of the notice of objection. If such a motion is filed, the disclosure of such Protected  
 24 Documents to the independent expert shall be withheld pending the ruling of the Court on any  
 25 such motion.

26           Prior to disclosing any Protected Documents designated "CONFIDENTIAL" or  
 27 "OUTSIDE COUNSEL ONLY" under this Protective Order or any information contained therein  
 28 to its independent expert, counsel for the receiving party shall cause such independent expert to

1 sign a copy of Exhibit B attached hereto and shall serve a copy of Exhibit B on counsel for the  
 2 other Parties. Counsel shall maintain the original of Exhibit B and shall provide a copy thereof to  
 3 the Court if required.

4       11. To the extent that Protected Documents or information contained therein are used  
 5 in depositions, such documents or information shall remain subject to the provisions of this  
 6 Order, along with the transcript pages of the deposition testimony referring to the Protected  
 7 Documents or information contained therein. Additionally, the parties may, within thirty (30)  
 8 calendar days of receipt of the final transcript of a deposition, designate documents, things,  
 9 materials or information disclosed in that deposition as either "CONFIDENTIAL" or "OUTSIDE  
 10 COUNSEL ONLY," as the nature of the information involved requires. Absent agreement of the  
 11 parties to the contrary, until the expiration of such period, all documents, things, materials or  
 12 information in a deposition shall be treated as "OUTSIDE COUNSEL ONLY." If any party  
 13 designates testimony given at a deposition "CONFIDENTIAL" or "OUTSIDE COUNSEL  
 14 ONLY" during the deposition, all persons not qualified to receive such information shall leave the  
 15 deposition for that portion of the testimony.

16       12. Any court reporter or transcriber who reports or transcribes testimony in this  
 17 litigation is hereby admonished that all Protected Documents and information designated as such  
 18 under this Order shall remain "CONFIDENTIAL" or "OUTSIDE COUNSEL ONLY," as  
 19 appropriate, and shall not be disclosed by them, except under the terms of this Order, and that any  
 20 notes or transcriptions of such testimony (and any accompanying exhibits) will be retained by the  
 21 reporter or delivered to counsel of record.

22       13. Inadvertent or unintentional production of documents, things, materials or  
 23 information containing Confidential Information which are not designated "CONFIDENTIAL" or  
 24 "OUTSIDE COUNSEL ONLY" shall not be deemed a waiver in whole or in part of a claim for  
 25 confidential treatment.

26       14. Inadvertent or unintentional production of privileged documents shall not  
 27 constitute a waiver of the attorney-client privilege or attorney work product doctrine as they apply  
 28 to those documents specifically or to the subject matter of those documents generally. If a party

1 produces documents that it believes should have been withheld as privileged, such party shall  
 2 provide a written request for the return of those documents within a reasonable time after having  
 3 actual knowledge that said documents have been produced. The receiving party must then return  
 4 those documents, along with any copies thereof, to the producing party within ten (10) calendar  
 5 days of receiving such notice. The receiving party may challenge the privileged nature of the  
 6 recalled documents by filing a motion with the Court and requesting an in camera review of the  
 7 documents in question.

8       15. Nothing herein is intended in any way to restrict the ability of counsel to use  
 9 "CONFIDENTIAL" or "OUTSIDE COUNSEL ONLY" material in examining or cross-  
 10 examining any employee, future employee, agent, expert or consultant of the producing party, or  
 11 any person who authored, received or is a named recipient of the "CONFIDENTIAL" or  
 12 "OUTSIDE COUNSEL ONLY" material.

13       16. Any receiving party that knows that it intends to present confidential information  
 14 of another party in oral form at trial, or during any pre- or post-trial hearing, shall first notify the  
 15 court and the producing party a reasonable amount of time in advance. Because of the policy  
 16 favoring public attendance at judicial proceedings, the parties agree to cooperate on minimizing  
 17 the presentation of protected information in open court. The Court does not here determine  
 18 which, if any, procedures for reducing the presentation of protected information may be suitable.

19       17. The Court reserves the power and authority to remove documents and materials  
 20 from the scope of this Order if it finds documents or materials designated by the parties do not  
 21 constitute material properly described as protectable by Fed. R. Civ. P. 26(c) or this Order.

22       18. In the event any party having possession, custody or control of any Protected  
 23 Documents receives a subpoena or other process or order to produce such information in another,  
 24 unrelated legal proceeding, from a non-party to this action, such party shall promptly notify  
 25 counsel for the producing party of the subpoena or other process or order, such that the producing  
 26 party may take the necessary steps to quash or otherwise object to the subpoena or other process  
 27 or order. The producing party shall have the burden of defending against such subpoena or other  
 28 process or order. The party receiving the subpoena or other process or order shall be entitled to

1 comply with it except to the extent the producing party has promptly notified the party receiving  
2 the subpoena or other process or order of its intent to take immediate legal action to quash or  
3 otherwise object to the subpoena or other process or order, in which case the party will not  
4 produce such Protected Documents while such legal proceeding are pending.

5       19. After termination of the litigation between the parties, the provisions of this Order  
6 shall continue to be binding, except with respect to those documents and information that become  
7 a matter of public record. This Court retains and shall have continuing jurisdiction over the  
8 parties and recipients of the Protected Documents for enforcement of the provisions of this Order  
9 following termination of the litigation between the parties.

10      20. Upon termination of the litigation between the parties by dismissal, judgment, or  
11 settlement, counsel for the party or parties receiving Protected Documents shall destroy the  
12 Protected Documents or return the Protected Documents to the counsel for the party or parties  
13 producing the Protected Documents. The party or parties receiving the Protected Documents  
14 shall keep their attorney work product which refers or relates to any such Protected Documents. If  
15 the receiving party elects to destroy the Protected Documents, the receiving party shall, within  
16 thirty (30) days of the destruction, certify to the producing party in writing that such destruction  
17 has been completed. The party receiving Protected Documents shall not use such Protected  
18 Documents or any information contained therein for any purpose whatsoever other than the  
19 litigation between the parties. The party or parties receiving Protected Documents shall not under  
20 any circumstances sell, offer for sale, advertise, or publicize such Protected Documents or any  
21 information contained therein.

22      ///

23      ///

24      ///

25      ///

26      ///

27      ///

28      ///

1        21. This Order shall be binding upon the parties and their attorneys, successors,  
2 executors, personal representatives, administrators, heirs, legal representatives, assigns,  
3 subsidiaries, divisions, employees, agents, independent contractors, or other persons or  
4 organizations over which they have control.

**IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

6 DATED: October 4, 2007 Respectfully submitted,

RONALD S. LEMIEUX  
MICHAEL N. EDELMAN  
VID BHAKAR  
SHANÉE Y. WILLIAMS  
PAUL, HASTINGS, JANOFSKY & WALKER LLP

By: \_\_\_\_\_ /s/ *Ronald S. Lemieux*  
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By: \_\_\_\_\_ /s/ *J.C. Rozendaal* (with permission)  
J.C. ROZENDAAL

Attorneys for Defendant  
RICOH COMPANY, LTD.

IT IS SO ORDERED on this 9<sup>th</sup> day of October, 2007.

MARILYN HALL PATEL  
UNITED STATES DISTRICT JUDGE

**EXHIBIT A**

## **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I have been designated as a person who may have access to information designated as "CONFIDENTIAL" as that term is defined in the Protective Order dated \_\_\_\_\_, 2007 in above-referenced action. I understand that I am NOT designated as a person who may have access to information designated as "OUTSIDE COUNSEL ONLY," as that term is defined in that Protective Order.

Having read that Protective Order, I agree to comply fully with it and to be bound by its terms with respect to all information designated "CONFIDENTIAL" as defined therein. I agree to maintain such information in strict confidence and not to disclose such information to any other person, or make use of such information, except in accordance with the terms of the Protective Order.

I agree to, and hereby do, submit myself to the jurisdiction of the United States District Court for the Northern District of California, for the purpose of enforcement of the terms of the Protective Order. I understand that any violation of the Protective Order is punishable by the contempt powers of the Court and that such punishment may include imposition of a fine in the amount of the damages sustained by my violation and an award of costs and attorneys' fees.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed at \_\_\_\_\_ (location) on \_\_\_\_\_ (date).

(signature)

Print name and address:

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**EXHIBIT B**

## **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I have been designated as a person who may have access to information designated as "CONFIDENTIAL" or "OUTSIDE COUNSEL ONLY" as those terms are defined in the Protective Order dated \_\_\_\_\_, 2007 in above-referenced action.

Having read that Protective Order, I agree to comply fully with it and to be bound by its terms with respect to all information designated "CONFIDENTIAL" or "OUTSIDE COUNSEL ONLY" as defined therein. I agree to maintain such information in strict confidence and not to disclose such information to any other person, or make use of such information, except in accordance with the terms of the Protective Order.

I agree to, and hereby do, submit myself to the jurisdiction of the United States District Court for the Northern District of California, for the purpose of enforcement of the terms of the Protective Order. I understand that any violation of the Protective Order is punishable by the contempt powers of the Court and that such punishment may include imposition of a fine in the amount of the damages sustained by my violation and an award of costs and attorneys' fees

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed at \_\_\_\_\_ (location) on \_\_\_\_\_ (date).

(signature)

Print name and address: